



Paper No. 6

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LAHIVE & COCKFIELD  
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BOSTON, MA 02109In re Application of  
Edelmann, et al.  
Application No. 09/658,969  
Filed: September 11, 2000  
Attorney Docket No: AHN-001DV2: OFFICE OF PETITIONS  
: A/C PATENTS  
: DECISION ON PETITION  
:  
:

This is a decision on the petition under 37 C.F.R. §1.53(e)(2), filed December 4, 2000, requesting in effect, that the "Notice of Omitted Item(s)" mailed October 26, 2000, in the above-identified application be withdrawn.

Application papers in the above-identified application were filed on September 11, 2000. However, on October 26, 2000, the Initial Patent Examination Division mailed applicant a "Notice of Omitted Items in a Nonprovisional Application." Applicant was notified that the application papers had been accorded a filing date; however, figure 3I up to 3L described in the specification appeared to have been omitted.

In reply, petitioner timely filed the instant petition. Petitioner asserts that the entire specification and all sheets of informal Figures (eight sheets total), including Figure 3 (panels A-H) were enclosed upon the original filing date of the application. In evidence thereof, petitioner submits a copy of the postcard receipt date stamped by the United States Patent and Trademark Office on September 11, 2000. Notwithstanding, petitioner acknowledges that the specification submitted erroneously makes reference to Figures 3I-3L, and submits a preliminary amendment to correct the discrepancy in the specification. Petitioner also requests refund of the petition fee under 1.17(i).

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. A review of petitioner's postcard receipt reveals that: 1) it was date stamped as received in the Office of Initial Patent Examination (OIPE) on September 11, 2000; 2) it specifically identifies the items being filed, including "22 pgs. of specification and 8 sheets of drawings (Figures 1-6)" and 3) it lacks any annotation of nonreceipt of any item denoted on the postcard. Thus, petitioner has shown that the items denoted, including the "8 sheets of drawings", were filed on September 11, 2000.

However, a review of the record reveals that the sheets of drawings submitted on September 11, 2000, include Figures 3A-3H, but not Figures 3I-3L. Applicant acknowledges erring in making reference to Figures 3I-3L in the specification. The amendment submitted with petition deletes all such references. Petitioner has amended the specification to cancel all references to any omitted drawings and corrected the references in the specification to the drawing figures to correspond with the Figures present in the application on the date of deposit and

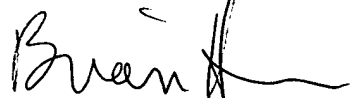
included in the original application papers. Thus, the "Notice of Omitted Item(s)" mailed October 26, 2000, was correct in stating that Figs. 3I-3L described in the specification appeared to have been omitted. Therefore, the "Notice" was properly mailed and will not be withdrawn.

Accordingly, the petition is **DISMISSED**.

The petition fee will not be refunded since the present petition and petition fee were necessary in view of applicant's filing error.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of September 11, 2000, using the 22 pages of specification and 8 sheets of drawings, including Figures 3A-3H, present in the application papers on filing.

Telephone inquiries related to this decision should be directed to Petitions Attorney Nancy Johnson at 703-305-0309.



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